



May 28, 2019

Planning and Zoning Commission
c/o Keith Brynes, AICP
Town of Stonington
152 Elm Street
Stonington, CT 06378

RE: Zoning map amendment from MC-80 (Marine Commercial) to NDD (Neighborhood Development District) for waterfront property in an AE-11 flood zone at 2, 4, 10 & 18 Washington Street and Willow Street (AKA Seaport Marine in Mystic); Noank Shipyard, applicant

Dear Commissioners:

Thank you for referring this zoning map amendment received March 27, 2019 to us for review and comment. The zoning map amendment was referred to our office to review for consistency with the goals and policies of the Connecticut Coastal Management Act (CCMA) [CGS Sec. 22a-90 through 22a-112, inclusive].

Zoning Map Amendment

The applicant seeks to rezone a waterfront MC-80 (marine commercial) zoned parcel of land to NDD (Neighborhood Development District) to allow for the future building of commercial and residential uses on waterfront land in an AE-11 flood zone. The site is currently an 11.2-acre boat yard with 120 boat slips in the water and an on-site restaurant. The property owner intends to consolidate marina services at its Noank location.

Diminishment of a Water-Dependent Use on a Waterfront Site

The goals and policies of the Connecticut Coastal Management Act state that water-dependent uses which can only be located in or near the water be given high priority and preference on waterfront sites. Specifically, Section 22a-92(3) of the General Statutes states:

“To give high priority and preference to uses and facilities which are dependent upon proximity to the water or the shorelands immediately adjacent to marine and tidal waters.”

The MC-80 zone in Stonington is a marine commercial zone which allows water-dependent uses. We believe that the subject waterfront site is appropriately zoned MC-80 since water-dependent uses can only be located on waterfront sites such as the subject site and that hotels, restaurants and residences which would be facilitated by this zoning map change can be located on upland sites elsewhere in the town and do not require access to the water. Waterfront

sites are scarce and very little waterfront land in Stonington is zoned MC-80 for water-dependent uses. Locating non-water-dependent land uses on a waterfront site would therefore constitute an adverse impact as defined by Section 22a-93 (17) of the Connecticut General Statutes:

“Adverse impacts on future water-dependent development opportunities” and “adverse impacts on future water-dependent development activities” include but are not limited to (A) locating a non-water-dependent use at a site that (i) is physically suited for a water-dependent use for which there is a reasonable demand or (ii) has been identified for a water-dependent use in the plan of development of the municipality or the zoning regulations; (B) replacement of a water-dependent use with a non-water-dependent use, and (C) siting of a non-water-dependent use which would substantially reduce or inhibit existing public access to marine or tidal waters.”

Given the long history of the site as an active boat yard, the site is physically suited for a water-dependent use. Marine services are identified in Section 10.4 of the Stonington Plan of Conservation and Development as “economic drivers” worthy of being enhanced and protected. This proposal allows a working boat yard to be supplanted by residential and commercial non-water-dependent land uses. We believe that waterfront parcels are most suitably used for water-dependent uses as well as much-needed support services including necessary parking, administrative office space, bait and tackle stores, boat construction, boat sales, boat maintenance and repair, dry boat storage, storage and warehousing, dive shops, seafood processing operations, etc. Without parking, administrative buildings and other support services, water-dependent uses could eventually become squeezed, unable to expand in the future or operate effectively in the present. A recent viewing of Google maps shows approximately 47 boats (and some cars) stored on the upland area where the applicant is proposing future residences as well as a private parking area for those residential units indicating a reasonable demand for water-dependent uses. The applicant should demonstrate to the Commission that the site cannot be sold to another marina operator or used for another water-dependent use.

FEMA Flood Zone

The entire site for the proposed residential and commercial development is a designated AE-11 flood zone. We are particularly concerned with siting residential uses in flood prone areas. The current structures on site are industrial and warehouse type structures as well as a restaurant which do not house people. In the event of a storm, employees typically vacate the workplace and commercial areas. This is not the case when residences are sited on flood prone land. The Connecticut Coastal Management Act does not support the location of residential housing in flood zones which would unnecessarily place people and property in harm's way during storm flooding events. This zoning map amendment will allow and facilitate residential housing on the site. Specifically, the CCMA states that municipalities should:

“...manage coastal hazard areas so as to ensure that development proceeds in such a manner that hazards to life and property are minimized...”

By knowingly placing more people at risk by siting residences in flood prone areas, this zoning map amendment potentially increases hazards to both life and property and is inconsistent with the CCMA. We recommend that the Commission not allow residential uses such as

townhouses and multi-family homes in flood prone areas. These areas are best reserved for commercial and industrial uses which can be vacated during storm events. Although the residential structures themselves may be elevated to meet FEMA standards in an AE-11 flood zones, there is no dry access for residents to exit the property during a storm event, leaving future residents stranded and unable to leave their homes. The site is relatively low relative to the elevation of the Base Flood Elevation (BFE). The elevation of the access road is less than 4' NAVD88, or approximately 7' below the BFE of 11'.

Tidal Wetlands

The proposed site plan may be illustrative at this time and subject to change, but it currently proposes to site townhouses within a few feet of tidal wetlands. Tidal wetlands are among the most biologically diverse systems in the world and they serve a myriad of valuable services, including flood storage. The Commission and the applicant should be aware that tidal wetlands do tend to migrate over time and are therefore not fixed in place. Siting townhouses so close to tidal wetlands may potentially create a situation in the future where the property owners will propose flood and erosion control walls to "protect" the townhouses from sea level rise and tidal wetlands migration. We strongly advise against building townhouses in a flood zone in close proximity to tidal wetlands.

Plan of Conservation and Development Conflicts

A local Plan of Conservation and Development (POCD) is essentially a master plan for the community. It guides future development and zone changes must conform to the POCD. The Stonington Plan of Conservation and Development illustrates a 'Future Land Use Map' of Mystic on page 129 and designates this particular waterfront site as "Marine Commercial." The proposed zoning map amendment to rezone this marine commercial site to Neighborhood Development District is therefore not in conformance with the town's POCD and also would seem to conflict with a number of provisions in the POCD text, as follows.

Section 3.2.5 states that the town will "Promote water dependent uses [in] coastal areas." Waterfront sites suitable for water-dependent uses are scarce and this rezoning removes another waterfront site from eligibility for hosting a viable water-dependent use. This zoning map amendment severely diminishes a water dependent use on a waterfront site.

Section 3.3.2 states that the town will "Discourage new public infrastructure or development in flood prone areas." The site is currently occupied by a boat yard which is an appropriate use on a waterfront site in a flood zone. By amending the zoning map and facilitating residential development on this site including townhouses and a hotel, this zoning map amendment would allow residential development in a flood prone area.

Section 3.2.5 states that the town will "Plan to adapt to the projected rise in sea level." However, this proposal to site residential uses on the waterfront at elevation 4' when the base flood elevation is 11' will place more people and property in harm's way. While retreating is one response to projected sea level rise, siting non-residential uses on flood prone sites is another response to sea level rise. However, placing new residential uses in flood prone areas is not adapting to sea level rise. Section 3.3.7 states that the town will "Restrict assisted living facilities, hotels[,] elderly housing and schools which have the potential to increase exposure of vulnerable populations in coastal flood hazard areas." This zoning map amendment will allow and facilitate the construction of a hotel in a coastal flood hazard area. Hotel guests are typically

not from the area nor are they familiar with the area and in flooding events they would have to be evacuated.

Section 10.3 states that the town should "...include planning for retention of existing businesses as part of its economic development efforts." The Connecticut Coastal Management Act recognizes waterfront sites as the only sites which can accommodate water-dependent uses in a community. By replacing a boat yard with residential uses, future water-dependent uses will most likely not occur at this site in the future.

Section 10.4 states the "...town should develop a comprehensive economic development plan that focuses on enhancing economic drivers, including but not limited to, tourism, high value manufacturing, research and development and *marine services*." (*emphasis added*). Marine services are a recognized economic driver in the community and these services cannot be located anywhere but on a waterfront site.

General Public Access

Including general public access on a waterfront site is one way to include a water-dependent use on a waterfront site that is redeveloped with non-water-dependent uses. On this 11.2-acre site, however, the limited general public access proposed is not commensurate with the loss of an existing boat yard.

Future Flood and Erosion Control Walls

If the zoning map amendment is approved and residential non-water-dependent uses are sited on the upland, the site will not be eligible for approval of future flood and erosion control structures to protect those residential structures in the event of sea level rise. Structures must be pre-1995 to be eligible for flood and erosion control walls. As the Commission is aware, any application for a flood and erosion control structure must be referred to CT DEEP under Section 22a-109(d) of the Connecticut General Statutes.

Conclusion

The site is entirely in the AE-11 flood zone and proposing to locate residences in the flood zone exposes more people and property to risk. The Connecticut Coastal Management Act discourages locating residences in flood zones. We believe this waterfront site is appropriately zoned MC-80 for a boat yard use. Rezoning the waterfront site to NDD will adversely impact the upland water-dependent use and allow residences in a flood zone.

We respectfully urge that the Commission not rezone this waterfront MC-80 zoned parcel for residential use and carefully consider the potential adverse impacts to the water-dependent use of a site that is highly suitable for water-dependent uses. Water-dependent uses can only be located on the waterfront, while townhouses and other residential units can be located on the upland anywhere in the community. Once this waterfront site is rezoned to NDD to allow for residential use, Stonington loses a rare and valuable site for water-dependent uses, possibly forever. The rezoning will have adverse impacts on present and future water-dependent uses and opportunities. While we recognize that the site development plan may change, this proposal diminishes a viable marina with upland support services by replacing the majority of the upland marine support services with non-water-dependent uses, including a second onsite restaurant, a hotel, and residential units and onsite parking to support the non-water-dependent uses. While a marina is included, it is no longer the primary land use on this 11.2-acre parcel. A part of one new building on the upland will support the marina and remaining boat slips. A limited

waterfront public access walkway has been included to replace the loss of the upland water-dependent use. While the applicant may be consolidating its marina operations at its Noank location, such a move does not offset the loss of a water-dependent use at this site.

Should the Commission decide that rezoning is appropriate, when reviewing future development proposals, the Commission should ensure that adequate water-dependent uses are included and adverse impacts to the existing water-dependent use are adequately mitigated.

We hope that these comments are helpful to the Commission. Pursuant to CGS Section 22a-110, we request that these comments be read into the record at a Public Hearing for this application. If we can be of further assistance to you in this or any other coastal management or Long Island Sound-related matter, please feel free to contact me at 860-424-3138.

Sincerely,

A handwritten signature in blue ink, appearing to read "B. P. Thompson", with a long horizontal line extending to the right.

Brian Thompson, Director
Land & Water Resources Division
Bureau of Water Protection and Land Reuse

cc: Diane Ifkovic, State of Connecticut National Flood Insurance Coordinator